

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHELANA L. GARDNER,

Defendant.

No. CR-08-097-RHW

**ORDER DENYING MOTION FOR  
REDUCTION IN SENTENCE  
UNDER SECTION 3582(c)(2)**

Before the Court is Defendant's Motion for a Reduced Sentence, brought under 18 U.S.C. § 3582(c)(2). Defendant asks the Court to retroactively apply the Fair Sentencing Act, a portion of which reduced the disparity between criminal penalties for crack cocaine and powder cocaine offenses. She also documents numerous personal accomplishments completed while in custody. While the Court is impressed with the progress of her rehabilitation, it regrets that it must deny her motion.

Defendant plead to three counts of distributing five or more grams of cocaine base. At the time of sentencing the Defendant had two prior drug-related felonies, and she was classified as a career offender. U.S.S.G. § 4B1.1. Therefore the offense level prescribed by that provision superseded that of the Drug Quantity Table, and the Court sentenced Defendant to 85 months, a significant downward departure from the applicable Guideline range. *Id.* § 4B1.1(b). Because the Court calculated Defendant's

1 sentence based on Section 4B1.1 and not using Section 2D1.1, the latter being the  
2 provision amended by the Fair Sentencing Act, the Defendant is not entitled to a  
3 reduction. United States v. Wesson, 583 F.3d 728, 731 (9th Cir. 2009) (holding that  
4 a career offender sentenced pursuant to § 4B1.1 is ineligible for a sentence reduction).

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant's Motion to Reduce Sentence (ECF No. 90) is **DENIED**.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
8 order and to provide copies to counsel, defendant and the U.S. Probation Office.

9 **DATED** this 16<sup>th</sup> day of December, 2011.

10  
11 *s/Robert H. Whaley*  
12 **ROBERT H. WHALEY**  
13 United States District Judge  
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